IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5578 OF 2005

Gram Panchayat Pawaimal, Pandare, Petitioner
Vs
Shri Bharat Yashwant Jagtap, .. Respondent
Mr A.A.Kulkarni, for the petitioner.
Mr P.B.Shah, for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 3rd October, 2005

P.C.:

1. Heard the learned counsel for the parties.

2. Rule, returnable forthwith. Mr. Shah, learned counsel, waives service for the respondent. By consent of the parties, petition is taken up for final hearing.

3. By the impugned order dated 4.4.2005 the trial court has rejected the application Exhibit-33 filed by the petitioner for setting aside "No W.S." order dated 3.2.2005. The application has been rejected relying upon the Judgment of the Apex Court in **Dr.J.J.Merchant and ors Vs. Shrinath Chaturvedi, AIR 2002 SC 2931**. It appears that the Judgments of this Court in **Shailaja A. Sawant V. Sayajirao Ganpatrao Patil, 2004(2) Maharashtra Law Journal 419** and of the Division Bench in **Chintaman Sukhdeo Kaklij & Ors. V. Shivaji Bhausaheb Gadhe & Ors, 2004(5) Bom.C.R. 573**, by which this Court has taken a view that the provisions of Order 8,

Rule 1 cannot be construed as mandatory and in exceptional and extraordinary circumstances the Court has discretion to permit the defendant to file written statement beyond the period of 90 days, were either not cited before the learned Judge or he was not aware about them. In both these judgments, the Judgment relied upon by the trial Court in **Dr. J.J.Merchant case** (supra) was also considered. Keeping that in view, in my opinion, the appropriate course would be to direct the trial Court to consider application Exhibit-33 afresh in the light of the observations made by this court in **Shailaja Sawant's** case as also in **Chintaman S.Kaklij's** case. Hence the following order.

4. The impugned order dated 4.4.2005 is set aside. The application Exhibit-33 stands restored to file. The trial Court shall decide the application Exhibit 33 filed in Regular Civil Suit No.235 of 2004 afresh in the light of the observations made by this Court in the aforementioned judgments, after giving an opportunity to the petitioner and the respondent to file additional affidavits if they so desire.

. Rule is, accordingly, disposed of.

(D.B.Bhosale, J.)